

6-24-03

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Utility Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicants: | Demidov et al. | Attorney Docket No.: | NU-207WO-1 |
| Serial No.: | 10/714,524 | Confirmation No.: | 2224 |
| Filed: | 11/14/2003 | Art Unit: | 2874 |
| Customer No.: | 000038731 | Examiner: | Jerry T. Rahll |

For: **OPTICAL FIBER AND SYSTEM CONTAINING SAME**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Express Mail No.: ED 739854857 US

Date of Deposit: June 22, 2005

I hereby certify that the accompanying Response (4 pages), a return receipt postcard, and this Transmittal Letter are being deposited with proper postage with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Helen Samson

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June 22, 2005

RESPONSE

Dear Sir:

This is a Response to the Office Action mailed 3/22/05 in the above-identified application, the time for response to which is extended to 6/22/05 by the Request for Two-Month Extension of Time included below in this Response.

Election of Species

Applicants provisionally elect with traverse the claims of Group I (claims 1-95). Applicants respectfully traverse the Restriction/Election requirement.

First, Applicants respectfully submit that the Examiner's requirement of election of species is improper. The existence of a generic invention, and claims drawn to such an invention, is not addressed by the Examiner. See MPEP §809.02(a). An Applicant is entitled to examination of all the claims if a generic claim is held allowable. See 37 CFR §1.41, and it is required an Applicant be advised of his or her rights under 37 CFR §1.41, as stated in MPEP §809.02(c). Second, as indicated by MPEP §806.04(e), claims are definitions of inventions, not species. Species are always the specifically different embodiments. The Examiner has made no attempt to determine which embodiments of the present application correspond to species. The species should be identified as the species of, for example, "figures 1, 2 and 3," or the "species of examples I, II or III." Only if the species cannot be conveniently identified can claims be grouped in accordance with the species to which they are restricted. See MPEP §809.02(b).

Applicants also traverse the Election/Restriction requirement on the basis that it would not be unduly burdensome for the Examiner to search all of the claims of all of the Groups. The Examiner states that Group I claims (claims 1-95) are drawn to an optical fiber device, classified in Class 385/ 37, Group II claims (claims 96-105) are drawn to a fiber laser, classified in Class 376/6, and that claims 106-121 (claims 106-121) are drawn to an optical amplifier, classified in 359/341.1, and restriction is proper as the inventions "have acquired a separate status in the art as shown by their different classification." However, proper examination of, for example, even *only* Group I claims would clearly require search of *all* of the foregoing classes and subclasses, as claims 51 and 52, both of Group I, recite, respectively, that the system of claim 46 of Group I is "configured to be a fiber laser" and is "configured to be a fiber amplifier."

Applicants also respectfully traverse the Election/Restriction requirement on the basis that the Groups selected are not proper species. Species must be mutually exclusive. See MPEP §806.04(f). As indicated at least by the dependent claims 51 and 52 of Group I discussed above, the Groups selected by the Examiner do not appear to be mutually exclusive. Claims 51 and 52 of Group I recite a fiber laser and fiber laser amplifier, respectively, and hence are not mutually exclusive with the Examiner's Group II, directed to a fiber laser, or with Group III, directed to a fiber amplifier.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the Restriction/Election requirement represented by the outstanding Office Action.

Applicants respectfully submit that the simplest and most proper resolution of this application is to examine all the pending claims in one application. Applicants further note that all the claims have already been searched by the USPTO as the International Search Authority in PCT/US02/14992, to which the present application claims priority. As a final matter, Applicants note that the exclusive licensee of the present application, who is responsible for all prosecution and maintenance (including fees) of the present application and patents issuing therefrom, is a Small Entity and at the present time unprofitable, and that it is burdensome to the company to maintain and prosecute several applications as opposed to a single application.


Request for Two-Month Extension of Time

Applicants hereby request a two-month extension of time to reply to the Office Action mailed 3/22/05 in the above identified application. As the outstanding Office Action provided for a one month shortened statutory time period for reply, the time for reply is now extended to 6/22/05 by this Request for Two-Month Extension of Time. Authorization is hereby granted to charge the Small Entity fee of \$225 for the requested two month extension of time to Nufern Deposit Order Account Number 502343.

Conclusion

This Response attends to all matters raised in the outstanding Office Action.
Authorization is granted to credit any overpayment, or to charge any underpayment,
associated with this Response to Nufern Deposit Order Account 502343.
Please contact the undersigned regarding any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. J. Rainville", with a long horizontal flourish extending to the right.

Peter J. Rainville, Reg. No. 41,263
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prainville@nufern.com

Date: June 22, 2005